

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL L. SZYMANSKI and U.S. POSTAL SERVICE,  
POST OFFICE, Buffalo, NY

*Docket No. 02-200; Submitted on the Record;*  
*Issued May 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than a two percent permanent impairment of his right lower extremity, for which he received a schedule award.

On May 31, 1991 appellant, a 39-year-old letter carrier, injured his right knee while in the performance of duty. Appellant filed a claim for benefits on the date of injury, which was accepted by the Office of Workers' Compensation Programs on August 16, 1990 for osteochondral fracture of right lateral femoral condyle and loose bodies, right knee.

On January 2, 2001 appellant filed a Form CA-7, claim for a schedule award based on the partial loss of use of his right lower extremity, stemming from his accepted 1991 employment injury.

On July 3, 2000 Dr. Keith C. Stube, appellant's treating physician and a specialist in orthopedic surgery, performed surgery on appellant for right arthroscopy and chondroplasty of his lateral tibial plateau. Appellant returned to limited duty on July 31, 2000, and returned to full duty on October 5, 2000.

In a report and impairment evaluation dated July 6, 2001, Dr. Stube stated:

"On physical examination [appellant] does have a significant effusion with a range of motion of 0 [to] 120 degrees. He has a quad circumference of 51 centimeters bilaterally 10 centimeters above his patella. He has joint space narrowing of approximately five millimeters on his right knee in the lateral compartment and patellofemoral compartment.

"Based on [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed.)], he has abnormal but within acceptable limits of joint space narrowing for an arthritic impairment, muscle strength and range of motion. He has a one percent total body or two percent lower extremity deficit

from his partial meniscectomy and I would estimate another two percent total body and five percent lower extremity deficit from chondromalacia and loose bodies based on Table 17[-]33 [page 546] and [Table] 17[-]31 [page 544] for a three percent total body and seven percent lower extremity deficit secondary to his injury on May 31, 1991.”

In a memorandum dated August 18, 2001, an Office medical adviser determined that appellant had a two percent impairment of the right lower extremity resulting from his accepted right knee condition. Relying on Dr. Stube’s statement that appellant underwent a partial meniscectomy of the right knee, the Office medical adviser accorded appellant a two percent impairment pursuant to Table 17-33, page 546, of the A.M.A., *Guides*.

By decision dated September 10, 2001, the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity for the period June 27 to August 6, 2001 for a total of 5.76 weeks of compensation.

The Board finds that the case is not in posture for decision.

The schedule award provisions of the Federal Employees’ Compensation Act<sup>1</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (5<sup>th</sup> ed.) as the standard to be used for evaluating schedule losses.<sup>3</sup>

In this case, the Office determined that appellant had a two percent permanent impairment of his right lower extremity based on Dr. Stube’s statement that appellant underwent a partial meniscectomy of the right knee. The Office medical adviser then applied this finding to the applicable table of the A.M.A., *Guides* to arrive at the total percentage of impairment in appellant’s right lower extremity. However, the Office medical adviser failed to consider Dr. Stube’s additional finding of a five percent lower extremity deficit resulting from chondromalacia and loose bodies based on Table 17-31 at page 544 and Table 17-33 at page 546 of the A.M.A., *Guides*. The Board will therefore set aside and remand the Office’s September 10, 2001 decision for the Office medical adviser to consider whether appellant is entitled to any additional impairment pursuant to the A.M.A., *Guides* based on Dr. Stube’s July 6, 2001 report and impairment evaluation.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

The decision of the Office of Workers' Compensation Programs dated September 10, 2001 is set aside and remanded in accordance with this opinion.

Dated, Washington, DC  
May 22, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member